IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.608 of 2007

Lakshmi .. Petitioner

Vs

1. The Secretary to Government
   Prohibition and Excise Department
   Government of Tamil Nadu
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police
   Egmore, Chennai - 600 008. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.A.K.S.Thahir
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, who is the sister of the detenu, Desingu alias Desi, son of Natarajan, who was incarcerated by order dated 17.3.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as Goonda, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records relating to the detention order No.101/BDFGISSV/2007, dated 17.3.2007 passed by the second respondent, to set aside the same and to direct the respondents to produce the detenu now confined in Central Prison, Puzhal, Chennai before this Court and to set him at liberty.

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2.1. The order of detention dated 17.3.2007 came to be passed based on the ground case said to have taken place on 23.2.2007 at about 7.30 a.m. When four Head Constables attached to N4 Fishing Harbour Police Station were on special duty to secure the detenu and one Chakkarai alias Chakkarapani and John alias Aruppu John, who were absconding accused in Crime No.14 of 2007, and notice all the three accused and rushed to apprehend them, the detenu took a knife from his back and rushed to cut Head Constable Pannirselvam over his neck. The accused rushed to the nearby bunk shop and picked up soda bottles, hurled the same against the police personnel. The bottles fell on the road and broken into pieces. The public who were at the spot noticing the atrocious activities ran for safer places apprehending danger to their lives. The normal traffic in that area was totally dislocated. The Head Constable Pannirselvam lodged a special report and the Inspector of Police, Law and Order, N4 Fishing Harbour Police Station registered a case in Crime No.15 of 2007 under Section 332, 336, 427, 307 and 506 (2) IPC. On 23.2.2007, the detenu surrendered on 23.2.2007 and was remanded to judicial custody by the Judicial Magistrate-II, Poonamallee.

2.2. The second respondent, taking note of the above case as a ground case and finding that there are two adverse cases pending against the detenu for various offences punishable under Sections 384, 506(2), 120(b), 147, 148, 341, 324, 326, 302, and 506 (2) IPC, having satisfied that the detenu is habitually commiting crime and acted in a manner prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

3. Since Mr.A.K.S.Thahir, learned counsel for the petitioner challenges the impugned order of detention dated 17.3.2007 mainly on the ground of delay in considering the representation dated 21.4.2007 made on behalf of the detenu, we do not propose to go into the other aspects of the case.

4.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

4.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

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4.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

4.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

4.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

5. Coming to the the case on hand, admittedly, on receipt of the order of detention dated 17.3.2007, a representation was sent to the detaining authority on 21.4.2007, which was received by them on 24.4.2007, and remarks were called for on 25.4.2007 and the same was received at the Collectorate on 27.4.2007. Parawar remarks were called for from the Sponsoring Authority on 30.4.2007, the same were received on the same date and a report was sent to the Government on 1.5.20047 and the same was received on 2.5.2007. The Under Secretary and the Additional Secretary to the Government dealt with the file on 4.5.2007 and the Minister (PW & Law) dealt with the file on 5.5.2007 and rejection letter was prepared on 7.5.2007. However, the records show that the rejection letter was sent to

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the detenu only on 11.5.2007 (four days). The delay of four days in sending the rejection letter prepared that too to a detenu, who is within the Chennai territory, viz., in Central Prison, Puzhal, Chennai is admittedly unexplained and inexcusable.

6. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

7. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

8. In the instant case, there is delay of four days in sending the rejection letter to the detenu, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition. The order of detention dated 17.3.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sasi

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The Secretary
   Prohibition and Excise Department
   Government of Tamil Nadu
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police
   Egmore, Chennai - 600 008.

3. The Superintendent,
   Central Prison, Chennai.

4. The Joint Secretary to Government,
   Public (Law & Order)
   Fort Saint George,
   Chennai-9.

5. The Public Prosecutor,
   High Court, Madras-104.

+1 cc to Mr.A.K.S.Thahir, Advocate Sr.No.54283.

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